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April 17, 2012

United States, et al. v. NCR Corp., et al., 10-cv-910

Dear Judge Griesbach:

I am writing on behalf of Defendant NCR Corporation (“NCR”) in regard to the revised Proposed Order Granting Motion for Preliminary Injunction and Findings of Fact, Conclusions of Law, and Terms of Preliminary Injunction Under Fed. R. Civ. P. 65(d), filed by the United States yesterday in the above-captioned matter. (Dkt. #362.) In light of the expedited nature of these proceedings, NCR is providing the Court with advance notice that it intends to file its own Proposed Order. NCR will make every effort to file as soon as possible, and by no later than Wednesday, April 25, 2012.

The United States represented in its motion for preliminary injunction, which was filed on March 19, 2012, that it would provide proposed findings of fact and conclusions of law that would be only a “slight variant” of the findings and conclusions submitted with last year’s motion, and that they would be provided to NCR and Appleton Papers Inc. (“API”) within a “few days”. (Dkt. #312 at 1.) During the telephone conference with the Court on March 20, 2012, counsel for the United States reiterated that the Proposed Order “is really going to be nothing that [NCR and API] have not seen already”, and confirmed that the United States planned to file it promptly. (Mar. 20, 2012 Tr. at 8-9.)

Neither of these representations was borne out. The Proposed Order was submitted yesterday, almost a month after the United States’ initial motion. Moreover, the Proposed Order contains over 60 pages of findings and conclusions, which are substantially different from the ones submitted by the United States in 2011. They have been revised to address numerous developments that have transpired since last year, and they repeatedly cite the recently submitted declarations and the testimony at the April 12 hearing.

NCR respectfully submits that it should be entitled to an opportunity to respond to the United States’ substantially changed support for its motion, and to likewise

cite the evidence from the April 12 hearing. As noted, NCR plans to submit for the Court's consideration its own Proposed Order, which will contain proposed findings of fact and conclusions of law that support denying the United States' motion for a preliminary injunction.

Respectfully submitted,



Darin P. McAtee

Hon. Judge William C. Griesbach  
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VIA CM/ECF

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